80357-9



No. 80357-9 (Consolidated with No. 80366-8)

**SUPREME COURT**
**OF THE STATE OF WASHINGTON**



RAJVIR PANAG, on behalf of herself and all others similarly situated,

Respondent,

v.

FARMERS INSURANCE COMPANY, a domestic insurance company, and CREDIT CONTROL SERVICES, INC. d/b/a Credit Collection Services,

Petitioners.

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MICHAEL STEPHENS, on behalf of himself and all others similarly situated,

Respondent,

v.

OMNI INSURANCE COMPANY, a foreign insurance company,

Defendant/Appellant,

and

CREDIT CONTROL SERVICES, INC. d/b/a Credit Collection Services,

Petitioner.

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# CREDIT CONTROL SERVICES, INC.'S BRIEF IN ANSWER TO AMICI CURIAE BRIEFS

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## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

**Federal Case**

**Statutes**



**Rules**



**Other Authorities**

## I. INTRODUCTION

Petitioner Credit Control Services, Inc. ("CCS") files this combined Answer to the five Briefs filed by the following Amici Curiae: the National Association of Subrogation Professionals ("NASP"), the American Insurance Association ("AIA"), the Property Casualty Insurers of America ("PCI"), the Washington Liability Reform Coalition ("LRC"), the Consumer Protection Division ("CP Division"), and the Washington State Trial Lawyers Association Foundation ("WSTLA Foundation").

Although certain Amici suggest otherwise, longstanding Washington law and sound public policy confirm that courts undertake an initial "gate-keeper" analysis to determine if the Consumer Protection Act ("CPA") applies at all. Thus, this Court's stated focus on the threshold issue of CPA standing reflects adherence to long-standing precedent.

The CPA does not and should not apply to transactions between parties where there is no relationship between them other than as tort adversaries. A sharp contrast can be drawn between these types of cases and those cases to which the CPA has been applied (including, but not limited to, consumers, quasi-consumers, other parties standing in the shoes of consumers, and parties in actual or "would-be" business relationships). After considering all of the issues of concern to Amici, CCS respectfully requests that this Court confirm the bright-line rule discussed in CCS's

Supplemental Brief and decline to apply the CPA to subrogation recovery demand letters that seek recovery in tort.

## II. STATEMENT OF THE CASE

For the purposes of this Answer, CCS relies upon the statement of the case set forth in its Supplemental Brief.

## III. ARGUMENT

### A. New Matters Raised in the Amici Curiae Briefs.

CCS's Answer is limited to the new matters raised in the Amici Curiae Briefs, which are summarized briefly below. *See* RAP 10.3(e).

NASP discusses the important societal benefits of subrogation, and notes that impairing or chilling subrogation practices would harm consumers. AIA and PCI focus on the inherently subjective notion of unfairness that would subject every tort recovery demand letter (no matter how carefully written) to attack under the CPA. The LRC argues that the CPA should not be transformed into a "General Business Practices Act."

The CP Division, which is one of 26 legal divisions in the Washington State Attorney General's Office, asks this Court to apply the CPA to all circumstances that could have the "capacity to deceive" with no gate-keeper or standing limitation whatsoever. Finally, the WSTLA Foundation suggests that the Insurance Code (Ch. 48.30 RCW) regulates

the content of subrogation letters. Notably, the WSTLA Foundation does not otherwise address the CPA standing issue.

## B. Longstanding Washington Law Confirms that the CPA Does Not Apply in All Circumstances.

Instead of addressing the long line of Washington cases that address and apply the threshold standing requirement, the CP Division attempts to wholly deny the existence of a threshold applicability determination. The CP Division no doubt has a laudable goal of ensuring the broadest possible scope for the CPA. However, in characterizing CCS and Farmers as seeking to add a sixth element to the five-element *Hangman Ridge*[1] test that determines if the CPA has been violated (and thereby usurping much of the CP Division's authority), the CP Division has set up "straw man" arguments that mischaracterize the positions being advocated.

The primary issue in this case is whether recipients of subrogation recovery demand letters have standing to sue under the CPA. As discussed in CCS's Supplemental Brief, Washington courts first look to whether the claim is of the type that can be brought under the CPA before they determine if there is a CPA violation under the five *Hangman Ridge* elements. Although this preliminary "gate-keeper" function is not always

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[1] *Hangman Ridge Training Stables v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 719 P.2d 531 (1986).

expressly referred to as "standing," it is an established threshold issue under the CPA. *See, e.g., Washington State Physicians Ins. Exch. & Ass'n v. Fisons Corp.*, 122 Wn.2d 299, 311-18, 858 P.2d 1054 (1993); *Holiday Resorts Cmty. Ass'n v. Echo Lake Assoc., LLC*, 134 Wn. App. 210, 219-22, 135 P.3d 499 (2006), *review denied*, 160 Wn.2d 1019 (2007); *State Farm v. Huynh*, 92 Wn. App. 454, 462, 962 P.2d 854 (1998); *Blewett v. Abbott Laboratories*, 86 Wn. App. 782, 783-84, 938 P.2d 842 (1997).

Certain types of allegedly unfair or deceptive conduct are expressly exempt from the CPA.[2] *See e.g., State v. Schwab*, 103 Wn.2d 542, 693 P.2d 108 (1985) (landlord-tenant disputes); *Bruce v. Northwest Metal Products Co.*, 79 Wn. App. 505, 903 P.2d 506 (1995) (employment-related disputes); *Stevens v. Hyde Athletic Indus. Inc.*, 54 Wn. App. 366, 773 P.2d 871 (1989) (personal injury disputes). This Court and the Court of Appeals have confirmed that the competency and strategies of professionals do not fall within the purview of the CPA. *See Short v. Demopolis*, 103 Wn.2d 52, 61-62, 691 P.2d 163 (1984) (certain aspects of the practice of law); *Ramos v. Arnold*, 141 Wn. App. 11, 20, 169 P.3d 482 (2007) (appraiser); *Jeckle v. Crotty*, 120 Wn. App. 374, 384-85, 85 P.3d 391 (2004) (law); *Demopolis v. Peoples Nat'l Bank of Washington*, 59

[2] Even the CP Division concedes that the CPA does not apply to certain disputes. *See* CP Division Br. at 10.

Wn. App. 105, 119, 796 P.2d 426 (1990) (law); *Quimby v. Fine*, 45 Wn. App. 175, 181, 724 P.2d 403 (1986) (medicine). It necessarily follows that a gate-keeper standing analysis is required to determine if the CPA applies to any given dispute.

The CP Division asks this Court to disregard the standing analysis and extend the CPA to this and, presumably, all other disputes.[3] Doing so would transform the CPA into a "General Business Practices Act" contrary to longstanding Washington law and public policy.

## C. Adversarial Torts (The Precipitating/Core Transactions in Subrogation) are the Focus of the Standing Analysis.

### 1. The Precipitating/Core Transaction Determines Whether the CPA Applies.

It is, of course, true that every time a complainant seeks redress under the CPA there is an adversarial dispute. Contrary to the CP Division's argument, it its not these disputes that are at issue here. Rather, this case addresses claims that are adversarial and based in tort at their core. As explained by NASP, subrogation demand letters in tort-based automobile accident claims typically come at the tail end of a lengthy

[3] It is curious that the CP Division should pursue this tack. It pursued a similar course in *State v. Schwab*, 103 Wn.2d 542, 693 P.2d 108 (1985), when it requested that the CPA be applied to violations of the Landlord Tenant Act. *Id.* at 548. This Court declared that the judiciary should give "the most careful consideration" to the process of judicial inclusion under the CPA. *Id.* This Court ultimately held that the CPA did not apply to the Landlord Tenant Act, and directed the CP Division to the legislature if necessary to prevent abuses. *Id.* at 553. The novel argument for extension of the CPA to tort claim recovery demand letters calls for a similar direction to the legislature for the far-reaching extension of the CPA it now seeks.

claim recovery process that is encouraged by longstanding Washington law and public policy. In order to make the necessary distinction between all complainants who seek redress under the CPA (to include consumers and parties in privity) and complainants whose first encounter was an adversarial tort, the allegedly deceptive acts must be viewed in context. Because the perspectives of the letter recipients are crucial to determining whether the CPA should apply, the letters themselves cannot be evaluated in isolation.

Here, the underlying core transaction is not the act of sending demand letters related to the underlying automobile accident, nor is it the letter recipients' acts of filing lawsuits against the letter senders. Rather, the involvement of Ms. Panag and Mr. Stephens in an automobile accident claim is determinative of whether they have the status and standing to act as "private attorneys general" under the CPA. Therefore, the proper analytical focus for determining whether the CPA applies is the precipitating/core transaction.

**2. The Adversarial Tort Claim Recovery Process is Exemplified by Subrogation.**

The CP Division accuses CCS of seeking a "free pass" for collection letters that are deceptive simply because they happen to relate to subrogation claims. This argument is predicated upon a fundamental

misunderstanding of subrogation itself.[4] The CP Division's attempt to focus on a hypothetical subset of subrogation letters that lack these key properties underscores its misguided belief that there could exist a subrogation demand letter that does not seek payment of an unliquidated amount. This is simply not possible.

As explained by NASP, subrogation necessarily involves a legitimate effort to recover unliquidated sums allegedly owing based upon an underlying tort. As with every other demand letter between tort adversaries (whether sent by a subrogating entity, a plaintiff's personal injury lawyer, or the victim himself or herself) a demand is being made for unliquidated damages not yet proven through litigation. The ultimate issue in this case is whether the tort claim recovery process exemplified by subrogation should be made subject to the CPA. Indeed, under the Court of Appeals' analysis, each and every demand letter (including but not limited to subrogation) would appear to have the capacity to deceive because it alleges an "amount due" when "[t]he basis of the alleged 'amount due' is an unliquidated tort claim[.]" *Stephens v. Omni*, 138 Wn. App. 151, 167, 159 P.3d 10 (2007).

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[4] Neither CCS nor Farmers have asked for a "free pass." If subrogation demand letters overreach, remedies exist under Washington law. *See* CCS's Supp. Br. at 13-14.

### 3. The Precipitating/Core Transaction in Subrogation is an Adversarial Tort to Which Even the CP Division Admits the CPA Does Not Apply.

Even the CP Division candidly admits that the CPA does "not apply" to certain tort adversaries. The CP Division's Amicus Brief states: "If this were simply a dispute between the two drivers about who was at fault for the accident, or how much the liable driver owed in damages, the CPA would not apply." CP Division Br. at 10. Following the CP Division's own reasoning to its logical conclusion leads to the very conclusion advanced by CCS, *i.e.*, that the CPA does not apply to disputes between adversaries to a tort claim, regardless who is asserting the rights of the underlying parties.

In subrogation, the only rights that can be asserted by an insurer are the rights of the policyholder. *See Allstate Ins. Co. v. Hughes*, 346 F.3d 952 (9th Cir. 2003), *as amended*, 358 F.3d 1089, 1091-92 (9th Cir. 2004) (citing *McRory v. N. Ins. Co. of N.Y.*, 138 Wn.2d 550, 556 n.6, 980 P.2d 736 (1999); *Mahler v. Szucs*, 135 Wn.2d 398, 417-18, 957 P.2d 632 (1998)). Subrogating entities such as CCS attempt to obtain reimbursement not only of sums paid by insurers, but also of sums paid by the policyholder in the form of a deductible. *See Leingang v. Pierce County Medical Bureau, Inc.* 131 Wn.2d 133, 138 n.2, 930 P.2d 288 (1997). In this case, the policyholders were the injured victims who had

tort claims to assert against the uninsured motorists. Thus, the precipitating/core transaction in these and other uninsured motorist subrogation cases is the dispute between the two involved drivers – a situation that even the CP Division agrees is not subject to the CPA.

It necessarily follows that neither Ms. Panag nor Mr. Stephens has standing to assert a CPA cause of action under these circumstances. If this Court were to conclude to the contrary, the inherently subjective notion of unfairness would subject each and every recovery demand letter (whether sent by an underlying claimant, his or her lawyer, or a subrogating insurer or its agent) to scrutiny and uncertainty, as discussed by AIA and PCI.

**D. Why Tort Adversaries Are and Should be Subject to Different Standards.**

CCS is asking this Court to draw a bright line that expressly excludes disputes between tort adversaries from the scope of the CPA. The justification for doing so is that fundamental differences exist between adversaries, as contrasted with consumers (would-be or actual) and/or parties in privity or some type of business relationship. To be sure, CCS is not asking this Court to identify each and every type of conduct that could potentially fall within the CPA. CCS is also not asking this Court to restrict the CPA "to situations where the plaintiff has a consensual business relationship with the defendant" as the CP Division has alleged.

CP Division Br. at 7. The discussion about business relationships actually helps explain why tort adversaries are and should be subject to different standards.

The CPA has, of course, been extended from consumers to quasi-consumers, and from fiduciaries to quasi-fiduciaries. The law imposes heightened protections – as it should – for circumstances in which people are justified in letting down their guards.[5] When a dispute arises between parties that have reason to rely upon each other, it is wholly appropriate that the CPA's relaxed standards of proof and heightened penalties would apply. At the outset, torts are (and should remain) separate and distinct from conduct that is undoubtedly subject to the CPA. This is because tort adversaries who are combatants are expected to advance their own positions on liability and damages.[6] Likewise, tort adversaries are expected to make aggressive contentions and lack any form of mutual reliance that could lead to a reasonable expectation of quasi-fiduciary treatment.

Another reason the CPA should not be applied to people who advocate behalf of adversaries is because such application would have the

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[5] *See, e.g., Van Noy v. State Farm*, 142 Wn.2d 784, 791-95, 16 P.3d 574 (2001) (discussing an insurer's fiduciary duties to its policyholder).

[6] Notably, "adverse" is defined as follows: "Opposed; contrary; in resistance or opposition to a claim, application, or proceeding. Having opposing interests; having interests for the preservation of which opposition is essential." BLACK'S LAW DICTIONARY, at 34 (Abridged 6th Ed. 1991) (emphasis added).

unintended consequence of forcing advocates to divide loyalties. Requiring an advocate (whether it be a subrogating entity, an attorney or a public adjuster) to simultaneously protect the interests of an alleged tortfeasor who is directly adverse to the interests of his or her client would render impossible his or her basic ability to truly advocate.

### E. Hypothetical Examples Support Sound Distinctions Between CPA and non-CPA Cases.

A number of hypothetical factual scenarios have been raised under which it is argued that the CPA would not – but should – apply if this Court were to confirm that the CPA does not apply to adversarial tort disputes. In reality, however, these hypothetical examples actually support the arguments being advanced by CCS. This is because the precipitating/core transactions in those examples are either quasi-fiduciary or quasi-consumer, not tort adversaries.

The primary example used illustratively by the CP Division involves a real estate transaction. The CP Division warns that the bright line rule advocated by CCS would exempt from the CPA a real estate agent's failure to disclose a property's history of illegal drug manufacturing. *See* CP Division Br. at 12. While this question is not at issue in this case, CCS nonetheless disagrees. The relationship between a home buyer and the broker hired by the seller is one developed in mutual

reliance. Under the right circumstances, the CPA could and should apply to such a claim because the underlying relationship suggests a reasonable expectation of protective conduct and, therefore, warrants the CPA's application. Indeed, the Court of Appeals recently held that a real estate agent who failed to disclose a history of illegal drug manufacturing to a purchaser had violated the CPA. *Bloor v. Fritz*, --- Wn. App. ---, 180 P.3d 805 (2008) The quasi-fiduciary relationship between the seller's real estate agent and the home buyer is the distinguishing factor.[7] Thus, this scenario illustrates the importance of the parties' reasonable expectations based upon their underlying transactional relationship.

Another illustrative example discussed in the CP Division's Amicus Brief involves an insurance agent who misrepresented insurance policy provisions to the policyholder. *See* CP Division Br. at 12. Once again, this is a business-type relationship much unlike the adversarial relationships between tortfeasors. The CP Division points out that the policyholder has the option to bring a tort claim based upon the misrepresentation and, on this basis, incorrectly speculates that the CPA would not apply under the analysis employed by CCS. Again, CCS disagrees. The Court of Appeals' decision to reinstate a policyholder's

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[7] *See Sing v. John L. Scott, Inc.*, 134 Wn.2d 24, 31-32, 948 P.2d 816 (1997) (discussing the fiduciary relationship between the real estate seller's broker/agent and the purchaser).

CPA claim against an insurance agent in *Shah v. Allstate Ins. Co.*, 130 Wn. App. 74, 87, 121 P.3d 1204 (2005), *rev. denied*, 157 Wn.2d 1006 (2006), is consistent with CCS's arguments. This is, of course, because the underlying transaction at the time of the act of alleged deception was a policyholder's claim associated with a contract of insurance. The relationship between the policyholder and the insurer is quasi-fiduciary.[8] The insurance agent, in turn, is in the same quasi-fiduciary relationship with respect to the policyholder.[9]

At issue in this case is an underlying transaction between parties who were adversaries in a tort-based automobile accident claim. Before Ms. Panag and Mr. Stephens had even received the letters they now characterize as having the "capacity to deceive," they were adverse (and, presumably, hostile) to the parties whose rights were being asserted in those letters. For this reason, the facts presented in this case are separate and distinct from the precipitating quasi-fiduciary or quasi-consumer relationships that underlie these examples.

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[8] *See, e.g., Tank v. State Farm Fire & Casualty Co.*, 105 Wn.2d 381, 385, 715 P.2d 1133 (1986).

[9] Likewise, the Stephens and Panag Supplemental Brief offers a hypothetical scenario involving a towing company that places knowingly fraudulent parking violation notices on vehicles before towing them. *See* Stephens and Panag Supp. Br at 18 n.14. Although again, not on point with the issues before this Court, in that hypothetical the parties are involved in an underlying bailment authorized by RCW 46.55.090(2), which is a form of quasi-consumer transaction to which the CPA would ostensibly apply.

## F. There is No "Free Pass": If Subrogation Demand Letters Overreach, Remedies Exist Under Washington Law.

If an uninsured motorist who was involved in an automobile accident receives a demand letter relating to that accident, any complaints he or she may have about the letter are appropriately addressed in existing law and not as a CPA add-on. As CCS discussed in its Supplemental Brief, a number of tort remedies exist. In addition, the WSTLA Foundation's Amicus Brief focuses on the Insurance Code's criteria for regulating the content of subrogation recovery demand letters.[10]

As the WSTLA Foundation points out, if a subrogation recovery demand letter is knowingly deceptive, it may also be subject to penalties imposed by the Insurance Code. The Insurance Commissioner undoubtedly has the power to regulate the business of insurance (including automobile subrogation recovery efforts), through its authorization to perform rule making and levy fines against knowing violators of those rules. *See* RCW 48.02.060; RCW 48.02.080.

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[10] Specifically, the WSTLA Foundation cites to RCW 48.30.040 ("False information and advertising," which provides that "no person shall knowingly make, publish, or disseminate any false, deceptive or misleading representation or advertising in the conduct of the business of insurance or relative to any person engaged therein."), and to RCW 48.30.010 ("Unfair practices in general – Remedies and penalties," which provides a fine not to exceed $250 for each violation committed after a cease and desist order is received from the Insurance Commissioner).

G. **As There was No Insurance Code Violation in this Case, There is No Basis to Allege a *Per Se* CPA Violation.**

CCS does not disagree with WSTLA Foundation's argument that the Insurance Code may apply under appropriate facts. There is, however, no evidence to suggest that CCS or any of the insurer defendants knowingly made, published, or disseminated any false, deceptive or misleading representation or advertising related to this case. *See* RCW 48.30.040. Although the Insurance Commissioner had the power to issue a cease and desist order to address the subrogation recovery demand letters sent to Ms. Panag and Mr. Stephens, it is significant that he elected not to do so. *See* RCW 48.30.010. Therefore, if this Court is inclined to apply the Insurance Code to the facts of this case, the record necessitates a finding that these statutory provisions were not violated.[11]

The WSTLA Foundation appears to then suggest that a violation of these Insurance Code regulations could possibly support a *per se* violation of the CPA. Although this issue is not presently before this Court, it is significant that standing to assert *per se* violations in the insurance context is limited to policyholders (as distinct from third parties). *See, e.g., Coventry Assoc. v. Am. States Ins. Co.*, , 136 Wn.2d 269, 279-80, 961 P.2d 933 (1998); *Tank*, 105 Wn.2d at 386; *Am. Mfrs. Mut. Ins. Co. v. Osborn*,

[11] The potential applicability of the Insurance Code was raised for the first time by the WSTLA Foundation and it not necessary to address for proper resolution of these cases.

104 Wn. App. 686, 697, 17 P.3d 1229 (2001); *Green v. Federated Am. Ins. Co.*, 28 Wn. App. 135, 137, 622 P.2d 869 (1981).

This is not surprising, given that insurers and their policyholders are in a quasi-fiduciary relationship. In *Murray v. Mossman*, 56 Wn.2d 909, 355 P.2d 985 (1960), this Court held that a third party could not sue an insurer for negligence and bad faith. This Court noted: "[t]he duty of an insurance company to protect its insured in the settlement of claims cannot consistently be extended to include protection to one who is prosecuting a claim against the insured." *Id.* at 912 (internal citation omitted). This Court continued, "the duty of the insurance company to use good faith in the handling of a claim against the insured springs from a fiduciary relationship that is entirely lacking between the person injured and the insurance company." *Id.*; *see also Tank*, 105 Wn.2d at 394; *Dussault v. Am. Int'l Group, Inc.*, 123 Wn. App. 863, 867-68, 99 P.3d 1256 (2004). By analogy, the same principles must be applied here. Even if there was evidence that a regulation had been violated (there is not), the parties all agree that there exists no basis for a *per se* CPA cause of action in this case.[12]

[12] Ms. Panag and Mr. Stephens concur that the circumstances presented in this case do not support a *per se* CPA violation. *See* Answer to Petitions for Review, at 12.

## H. Widespread Concerns Over the Slippery Slope of CPA Claims that Could Follow.

It is significant that the WSTLA Foundation did not squarely address the argument that would appear to be of great concern to WSTLA members: If the CPA is extended to apply to the practice of sending subrogation demand letters, then CPA claims could also be asserted against plaintiffs' attorneys and legal staff who engage in the practice of sending "demand letters" or "offers to settle" in tort cases. *See* CCS's Supp. Br. at 15-16. As this issue was addressed only by CCS and was not briefed by Ms. Panag or Mr. Stephens, it would have been appropriate for the WSTLA Foundation to address it in its Amicus Brief.[13]

Instead of discussing the issue of whether the CPA could be applied to demand letters sent by plaintiffs' attorneys, the WSTLA Foundation limited its Amicus Brief to addressing the Insurance Code. If the Insurance Code issue is properly understood to be a proposed limitation on the applicability of the CPA, then it would appear to follow that the WSTLA Foundation must also be concerned about the slippery slope of CPA claims that could follow a ruling that expanded CPA standing to tort adversaries beyond subrogation.

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[13] *See* RAP 10.6(b) (explaining that submission of an amicus brief is appropriate where additional argument is necessary on a specific issue).

Although it is often assumed that attorneys' actions on behalf of clients directed at opposing parties would be exempted from the CPA under *Short v. Demopolis*, 103 Wn.2d at 60-61, and its progeny, a close review of that line of cases calls into doubt that assumption. As this Court stated in *Short*, "[t]he CPA contains no language expressly including or excluding attorneys from its purview." *Id.* at 56. To the contrary, the CPA applies to "certain entrepreneurial aspects of the practice of law" to include "business aspects of the legal profession [that] are legitimate concerns of the public[.]" *Id.* at 60, 61; *see also Demopolis v. Peoples Nat'l Bank of Washington*, 59 Wn. App. at 119 (discussing the applicability of the CPA to attorneys' entrepreneurial and commercial endeavors).

While clients may not assert CPA claims over their attorneys' competency and strategy, it remains an open question as to whether CPA claims can be asserted against an attorney by a client's adversary. Arguably, all attorneys in private practice who zealously represent clients' interests do so to further their own entrepreneurial or commercial endeavors just as CCS and Farmers did in this case.[14] Therefore, if this

[14] The underlying Court of Appeals decision focused exclusively on the commercial aspects of CCS's relationship with its client insurers despite the absence of any commercial relationship between CCS and Ms. Panag, or CCS and Mr. Stephens. *See Stephens v. Omni*, 138 Wn. App. at 176 (focusing on the fact that CCS "conducts commerce" with certain insurers).

Court were to allow disgruntled subrogation letter recipients to assert CPA claims against subrogating entities (which often include law firms retained to pursue subrogation), the natural extension of such rule a would allow disgruntled tortfeasors who received demand letters from plaintiffs' attorneys to assert CPA claims.[15]

Amici appear to share fear over the dramatic extension of the CPA to tort adversaries. Such an expansion would lead to a slippery slope of CPA claims that would deter out-of-court resolution of tort disputes and overburden courts, contrary to Washington law and public policy.

## IV. CONCLUSION

This Court's identification of the "standing" issue attracted the attention of six wide-ranging and important friends of the Court, and resulted in five distinct Amicus Briefs. This Court's decision should reflect those concerns raised by Amici Curiae as discussed herein. In accordance with existing law and strong public policy, this Court should affirm the threshold "gate-keeper" determination of whether the CPA applies at all. In order to alleviate the concerns of nearly all Amici, this Court should hold that the CPA does not and should not apply to

[15] There is support for this notion in this Court's decisions in *Bohn v. Cody*, 119 Wn.2d 357, 364, 832 P.2d 71 (1992) (explaining that even in the absence of an attorney/client relationship, an attorney may owe a duty of care to non-clients), and *Stangland v. Brock*, 109 Wn.2d 675, 747 P.2d 464 (1987) ("There cannot be a greater duty between an attorney and third persons affected by the attorney-client agreement than there is between the attorney and the client.").

transactions between parties with no relationship between them other than being tort adversaries.

RESPECTFULLY SUBMITTED this 10th day of June, 2008.

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## DECLARATION OF SERVICE

Leslie Nii Yamashita states:

I am a citizen of the United States of America and a resident of the State of Washington, I am over the age of 21 years, I am not a party to this action, and I am competent to be a witness herein.

On this 16th day of June, 2008, I caused to be filed via electronic filing with the Supreme Court of the State of Washington the foregoing CREDIT CONTROL SERVICES, INC.'S BRIEF IN ANSWER TO AMICI CURIAE BRIEFS. I also served copies of said document on the following parties as indicated below:

| Parties Served | Manner of Service |
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| ***Counsel for Panag & Stephens:***<br>Matthew J. Ide<br>Ide Law Offices<br>801 Second Avenue, Suite 1502<br>Seattle, WA 98104-1500 | ( ) Via Legal Messenger<br>( ) Via Overnight Courier<br>( ) Via Facsimile<br>(X) Via U.S. Mail |
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| Sarah C. Schreck<br>828 W. Cliff Drive #1<br>Spokane, WA 99204 | ( ) Via Legal Messenger<br>( ) Via Overnight Courier<br>( ) Via Facsimile<br>(X) Via U.S. Mail |
| *Counsel for Amici LRC:*<br>Tim Layton, Director of Legal Affairs<br>Washington State Medical Association<br>1800 Cooper Point Way S, Bldg. 7A<br>Olympia, WA 98502 | ( ) Via Legal Messenger<br>( ) Via Overnight Courier<br>( ) Via Facsimile<br>(X) Via U.S. Mail |

| Parties Served | Manner of Service |
|---|---|
| *Counsel for Amici AIA/PCI:*<br>Clifford A. Webster<br>Melvin N. Sorensen<br>Carney Badley Spellman, PS<br>701 – 5th Avenue, Suite 3600<br>Seattle, WA 98104 | ( ) Via Legal Messenger<br>( ) Via Overnight Courier<br>( ) Via Facsimile<br>(X) Via U.S. Mail |

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Executed at Seattle, Washington, this 16th day of June, 2008.

Leslie Nii Yamashita

Leslie Nii Yamashita

Filed as attachment to Email

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**Please find attached in PDF format the Brief in Answer to Amici Curiae Briefs of Petitioner Credit Control Services, Inc., which we would request be filed among the papers of Cause No. 80357-9; Panag v. Farmers Ins. Co. and Credit Control Services, Inc. (consolidated with Cause No. 80366-8; Stephens v. Omni Ins. Co. and Credit Control Services Inc.). This document is submitted by Melissa O'Loughlin White, WSBA No. 27668, phone: (206) 340-1000, email: mwhite@cozen.com.**

**Thank you for your attention to this matter.**

<<2008-05-16 CCS's Brief in Answer to Amici Curiae Briefs.pdf>>

Leslie Nii Yamashita, Secretary
on behalf of ***Dava Bowzer, Secretary***
***to Melissa O'Loughlin White, Molly Siebert Eckman***
***and Kevin Michael***
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